

1 UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF WISCONSIN  
3 -----

4 UNITED STATES OF AMERICA, )  
5 )  
6 Plaintiff, ) Case No. CR 10-288  
7 ) Milwaukee, Wisconsin  
8 vs. )  
9 ) December 5, 2011  
10 JAMES A. STUART, JR., ) 2:11 p.m.  
11 ) VOLUME 1  
12 Defendant. ) AFTERNOON SESSION  
13 -----

14 **TRANSCRIPT OF JURY TRIAL**  
15 BEFORE THE HONORABLE CHARLES N. CLEVERT, JR.  
16 UNITED STATES DISTRICT JUDGE, and a jury.

17 APPEARANCES:

18 For the Plaintiff  
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Proceedings recorded by computerized stenography, transcript  
produced by computer aided transcription.



AFTERNOON SESSION

(Trial resumed at 2:11 p.m.)

THE COURT: Ready to proceed?

MR. JACOBS: Judge, we had questions about technology.

THE COURT: All right.

MR. JACOBS: As I say, there is no outlet for the  
laptop.

THE COURT: Be seated, please.

(Discussion off the record.)

(Jury in at 2:15 p.m.)

THE COURT: Mr. Jacobs, you may proceed.

GOVERNMENT OPENING STATEMENT

MR. JACOBS: May it please the Court, Mr. Stuart,  
Mr. Bernhoft.

Ladies and gentlemen of the jury, my name is Matt  
Jacobs. And as I indicated at the beginning, I represent the  
plaintiff in this case, the United States of America. Because  
this is a criminal case, I represent the prosecution.

This is my opportunity to initially address you and  
give you some sense of what's going to happen in this trial  
because, you know, as we tell people, you get on a jury because  
you don't know anything about the case. So this is my  
opportunity to give you a roadmap, a layout of what I expect the  
evidence in this case will establish.

This case is called United States vs. James A. Stuart,

1 Jr., and it involves three charges. If I can get this done  
2 right here.

3 Mr. Stuart is charged with three counts, three  
4 offenses, three charges, each of which is a violation of federal  
02:17 5 law. And the specific federal law is called Title 26 of the  
6 United States Code, Section 7201. That's just a name for a  
7 statute that Congress passed, but it's commonly referred to as  
8 tax evasion. And the charges in the indictment are that  
9 Mr. Stuart attempted to evade the federal income taxes he owed  
02:18 10 for the years 2005 through 2007. And each one of those years is  
11 a separate charge, so the three counts are 2005, 2006, and 2007.

12 The evidence I expect that you'll hear during this  
13 trial will first establish some background about Mr. Stuart.  
14 Mr. Stuart, during the years in question, 2005 through 2007, he  
02:18 15 was married, lived in Hartland, Wisconsin. He was the president  
16 and majority owner of a company called New Age Chemical,  
17 Incorporated, which was located out in Delafield, Wisconsin.  
18 And as a result of working and owning part of New Age Chemical,  
19 Mr. Stuart received income primarily in two forms. He got  
02:19 20 compensation from New Age Chemical as its president, but he  
21 also, because he was an owner, received the profits, a portion  
22 of the profits. He was the 70 percent owner, so if the company  
23 made money he received 70 percent of the profits of the company.

24 As I say, the charges concern the years 2005 through  
02:19 25 2007. But you'll hear evidence concerning Mr. Stuart's filing

1 history to give a sense of what his prior activities were prior  
2 to the years that he's charged with.

3 And so we start with the years 2002 through 2004. And  
4 you'll hear that Mr. Stuart, he filed timely personal federal  
02:19 5 income tax returns for himself and his wife. He reported those  
6 wages I was talking about that he was getting from New Age  
7 Chemical. You know, he got a W-2, he attached the W-2 on his  
8 tax returns, he filed that, he reported that.

9 He also reported the profit, his share of the profit.  
02:19 10 Or sometimes the business had a loss, he gets to report that  
11 loss also. And he did that for those years 2002, 2003, 2004.  
12 He reported the income, and he paid whatever taxes he had owed  
13 for those years. And, in fact, you'll see those tax returns and  
14 a summary of Mr. Stuart's prior tax history.

02:20 15 As you see here, the wages he got from New Age  
16 Chemical during years '02 '03 and '04, they range from a little  
17 more than \$136,000 in '04 to a little more than 190,000 in '02.  
18 In some of those years he had a profit or a loss from New Age  
19 Chemical, and in one year he had a capital gain. And so he had  
02:20 20 taxable income in those years ranging anywhere from 66,000 to  
21 more than \$285,000, and he had federal tax obligations, and you  
22 see it there, and he reported and paid that -- those taxes.

23 But this case concerns what happened after 2004. And  
24 so we look next at the filing history for 2005 through 2010.  
02:21 25 And the conduct that forms the basis of this case began

1 approximately September of 2005, when Mr. Stuart -- he filed  
2 what's called an amended tax return. He filed an amended -- a  
3 -- it's called a Form -- you know, your individual tax return,  
4 that's a 1040, if you file an amended one, a replacement one,  
02:21 5 it's called a 1040X. And he filed this -- he and his wife filed  
6 this, and he claimed that he was mistaken, he actually had no  
7 wages in 2002 versus the 190 some-odd thousand he reported on  
8 the original return. He said because I've actually had no  
9 wages, I want a refund of all of the federal income taxes that  
02:21 10 had been withheld and paid for 2002. And, in fact, I also want  
11 a refund of the Medicare taxes and I want a refund of the  
12 payroll taxes that I had paid in the Medicare and Social  
13 Security taxes.

14 That starts, as I say, September of 2005. Then, in  
02:21 15 April of 2006, Mr. Stuart filed his 2005 tax return. This is  
16 the basis of count one. And that again, that's a Form 1040.  
17 And on this return -- he only filed it for himself -- he claimed  
18 he had no wages; he claimed he had no income from New Age  
19 Chemical; that the only income he had was \$631 in interest and  
02:22 20 penalties. And, as a result, because during 2005 Mr. Stuart had  
21 been getting wages paid through New Age Chemical and taxes had  
22 been withheld, when he filed his tax return he said I want a  
23 refund of all those taxes that have been withheld, and I also  
24 want a refund of all the Medicare taxes and all the Social  
02:22 25 Security taxes that were withheld for that year.

1 Later in 2006, Mr. Stuart filed amended returns for  
2 the years 2003 and 2004. Again, those Forms 1046. And again,  
3 consistent with what had happened for the 2002 tax year, he  
4 claimed he had no wages — you know, contrary to the original  
02:23 5 returns — "I don't have any wages, I don't have any income for  
6 New Age Chemical." And, again, all he claimed was small amounts  
7 of interest or dividends for those years. And, again, he said,  
8 "So, really, I want a refund of all those withheld taxes, I want  
9 a refund of all the Medicare taxes, I want a refund of all those  
02:23 10 Social Security taxes."

11 You'll also hear evidence that affidavit the 2005 tax  
12 year, Mr. Stuart filed no federal income tax returns for 2006 or  
13 2007. And those are the years that are the basis of the charges  
14 in counts two and three of the indictment. And he has not filed  
02:23 15 federal income tax returns through the year 2010 which would  
16 have been due, I guess, April of 2011.

17 So, you'll hear evidence about the IRS's response to  
18 these tax returns, these amended tax returns that Mr. Stuart  
19 filed. And what you'll hear is that the IRS sent letters to  
02:23 20 Mr. Stuart.

21 First, in July of 2006, they sent him a letter denying  
22 his claim for a refund for those 2002 taxes. They told him,  
23 "There's no basis to allow any part of your claim. The income  
24 you received in 2002 is clearly wages and is taxable; that if  
02:24 25 you want to pursue this, you have to file a claim in court."

1 Mr. Stuart responded to that and he said, "I disagree."

2 The IRS sent further correspondence to Mr. Stuart. It  
3 sent him a series of letters starting in March of 2007. They  
4 sent one for the 2002 amended tax return he filed, they sent one  
02:24 5 for the amended 2003 tax return he filed, and they sent one for  
6 the 2005 regular tax return he filed where again he claimed he  
7 had no wages. And the IRS told him, "The information you're  
8 supplying to us is frivolous. It has no basis in law. It's  
9 been repeatedly rejected by courts as without merit. And that  
02:24 10 you face the potential for criminal prosecution if you continue  
11 to pursue this avenue."

12 They included with these letters a publication  
13 explaining, it's called, "Why Do I Have to Pay Taxes?" And they  
14 explained various arguments that people have put forth and why  
02:25 15 those are baseless and why you have to pay federal income taxes.

16 Mr. Stuart responded with more correspondence of his  
17 own. And there are several letters. I expect that you'll see  
18 at least a few of them that Mr. Stuart sent in to the IRS.

19 He indicated that the Internal Revenue Code was too  
02:25 20 complex. That he was relying on his own research. And he  
21 described a dichotomy between James A. Stuart, spelled with just  
22 initial capital letters, and a James A. Stuart, spelled with all  
23 capital letters. He said the one without all capital letters  
24 was a natural person, and the James A. Stuart, with all capital  
02:25 25 letters, was a legal entity. That the James A. Stuart, with

1 only initial capital letters, was the trustee with no Social  
2 Security number or no tax information number; whereas, the  
3 capital letter James A. Stuart, that was a trust that had a  
4 Social Security number.

02:26 5 He said that New Age Chemical had hired Stuart,  
6 capital letters, not Stuart, small letters except for initial  
7 capital letter. He said, therefore, Stuart, with all capital  
8 letters, received income, not Stuart, just one capital letter.  
9 And, in fact, he cited to his support for this, English grammar  
02:26 10 rules.

11 In addition, you'll see Mr. Stuart did a number of  
12 actions. Because, as I think I mentioned to you, during 2005,  
13 he was being paid wages, got a W-2, they were withholding taxes,  
14 the taxes were being paid over to the IRS. So Mr. Stuart took a  
02:26 15 number of actions.

16 First, in September of 2005, he changes employment  
17 status from a W-2 wage earner where withholding was taken out of  
18 his income, his wage payments, to an independent contractor so  
19 that the payroll service that was handling payroll for New Age  
02:27 20 Chemical didn't withhold any taxes from his wages and didn't pay  
21 any over to the IRS.

22 Nonetheless, the payroll service, a company called  
23 Payroll Data Services, you'll hear from a person who used to  
24 work there, they generated a W-2 for that period of time when he  
02:27 25 was getting withholding and payments as an employee, and they



1 generated what's called a Form 1099. Because when you're an  
2 independent contractor you get your income reported without  
3 withholding reported to you on a 1099. And those forms got sent  
4 to the IRS.

02:27 5 So, in April of 2006, Mr. Stuart acted again. And in  
6 this case, he directed New Age Chemical - I think I may have  
7 mentioned he was the president and a 70 percent shareholder so  
8 he controlled the company. The minority interest was owned by  
9 his sister Beverly Schlipp. He directed them to start paying  
02:27 10 him directly. Don't go through that payroll company because, as  
11 I've mentioned, the payroll company generates W-2s or 1099s and  
12 sends those to the IRS.

13 And as a result, the company started to pay him  
14 directly with checks out of their own payroll account or their  
02:28 15 operating account. And there was no withholding for taxes for  
16 the money that he was getting, and there was no W-2 generated  
17 and filed with the IRS, and there was no 1099 generated and  
18 filed with the IRS.

19 And then, finally, in August of 2007, Mr. Stuart  
02:28 20 opened a bank account in the name of New Age Chemical Ltd.  
21 Drawing Account for the Benefit of the Delafield Trust, and he  
22 directed New Age Chemical not to send his payments to him in the  
23 name of James A. Stuart, but to send it to him in the name of  
24 this drawing account and he would deposit those into this bank  
02:28 25 account he opened in the name of the trust.

1 Now, despite that, you'll hear that the IRS conducted  
2 a search of New Age Chemical in February of 2009, and got hold  
3 of the records from there. Obtained records from the various  
4 bank accounts. And so the IRS has been able to put back  
5 together the monies, the income that Mr. Stuart earned during  
6 2005, 2006 and 2007. And the evidence you'll hear will reflect  
7 that in 2005, I may have mentioned, he was paid through this  
8 payroll service, this Payroll Data Services is the name of the  
9 company, and that all of those payments were directly deposited.

10 Now, some were paid as an employee with withholding. It was  
11 about \$100,000 paid to Mr. Stuart with withholding and the W-2  
12 was generated. And, in fact, 18,000 -- little more, almost  
13 \$19,000 was withheld, paid over to the IRS. But I mentioned to  
14 you, he changed to an independent contractor and he received  
15 another \$53,000 in payments to New Age Chemical, but no  
16 withholding, but a Form 1099 was sent to the IRS.

17 In addition, New Age Chemical generated a profit for  
18 the year 2005, and as the 70 percent owner Mr. Stuart was  
19 responsible for reporting and paying taxes on that. And that's  
20 another \$94,000.

21 In 2006, you'll hear, again, he was initially paid  
22 through that payroll service, direct deposits, but as an  
23 independent contractor with no withholding, and he received a  
24 little more than \$40,000. Again, no withholding. But there was  
25 a Form 1099 for that portion of the year. But as I mentioned

1 earlier, the evidence will show that he then had the New Age  
2 Chemical pay him directly so there would be no withholding, no  
3 W-2s, no 1099, and he received more than \$130,000 more for that  
4 year. And, again, no withholding, no W-2, no 1099. And then he  
02:30 5 received business income as the 70 percent owner for New Age  
6 Chemical of more than \$75,000.

7 In 2007, at that point Mr. Stuart was being paid  
8 directly by New Age Chemical, not through a payroll date  
9 service. And he was being paid by checks. And, in fact, he was  
02:31 10 paid more than \$227,000 during 2007.

11 For the first part of the year those checks were  
12 issued to Stuart in his own name, and then at his direction it  
13 was changed and they were paid to this New Age Chemical Ltd.  
14 drawing account, another \$87,000, all of which go to bank  
02:31 15 accounts controlled by Mr. Stuart. But, again, no withholding,  
16 no W-2s, no 1099s and, as I had mentioned earlier, no tax  
17 returns, no income reported, no taxes reported, no taxes paid.

18 Based on that evidence, you'll hear that for those  
19 three years, for '05 Mr. Stuart had income in excess of  
02:31 20 \$230,000. He had total taxes owed of \$62,000. And as I  
21 mentioned, there was some withholding at the beginning of the  
22 year, about \$19,000, but obviously not nearly the taxes he owed  
23 for that year.

24 In 2006 he had income of more than \$245,000, he owed  
02:31 25 taxes on more than \$68,000, and he paid zero.

1 In 2007 he had income of more than \$400,000, total  
2 taxes of more than \$126,000, and he paid zero.

3 You'll hear testimony that during this period of time  
4 Mr. Stuart received advice from, was contacted by a series of  
02:32 5 people. As I mentioned earlier, the IRS sent him letters saying  
6 this is baseless, this is frivolous, it's been rejected by the  
7 courts, you may find yourself being criminally prosecuted if you  
8 continue in this direction. But he also received advice from  
9 other third parties.

02:32 10 You'll hear from an accountant, a Patrick Walsh,  
11 long-time family accountant. He'll discuss with you that, yes,  
12 Mr. Stuart was not happy with paying taxes in the years that  
13 Mr. Walsh had helped prepare his individual tax returns. And  
14 that when he started down this avenue Mr. Walsh tried to  
02:32 15 convince him not to do it. Gave him articles discussing why  
16 this was a problem and that he should stop it.

17 You'll hear from another accountant that Mr. Stuart  
18 went to, a Daniel Hau who again tried to tell him. I believe he  
19 told him there was a special place in IRS hell for people who  
02:33 20 pursue these arguments. That didn't stop Mr. Stuart.

21 You'll hear from a woman named Allison, as I say, I  
22 think her married name now is Putland. She's an accountant by  
23 education and Mr. Stuart's niece. She'll discuss how she,  
24 again, approached Mr. Stuart, tried to convince him not to do  
02:33 25 this, that he was wrong, that he should pay taxes, he should

1 report this income.

2 You'll hear -- there'll be documents introduced that  
3 he tried similar arguments with the Wisconsin Department of  
4 Revenue; that he also tried to claim he had no wages for 2005;  
02:33 5 that the Wisconsin Department of Revenue and their Tax Appeals  
6 Commission rejected it, and; that in June of 2007, they rejected  
7 Mr. Stuart's claims, told him they were groundless, frivolous,  
8 and a waste of state resources.

9 Nonetheless, as I've mentioned, you'll hear that  
02:34 10 Mr. Stuart didn't file tax returns for '06 and '07, filed a tax  
11 return claiming essentially no income in 2005, and didn't pay  
12 any taxes for '06 or '07, and, in fact, hasn't filed tax returns  
13 through 2010.

14 At the end of the trial I'll have another opportunity  
02:34 15 to address you, and at that time I'll indicate that the evidence  
16 in this case as I've outlined there establishes that Mr. Stuart  
17 had a tax due and owing for the years 2005 through 2007; that he  
18 intended to evade and defeat the ascertainment, assessment,  
19 computation or payment of these taxes; that he acted willfully  
02:34 20 to evade the payment of these taxes and, that is, that he had a  
21 voluntary and intentional violation of a known legal duty. And  
22 based upon that, I'll ask you to return verdicts of guilty  
23 against Mr. Stuart.

24 Thank you.

02:34 25 THE COURT: Mr. Bernhoft?

1 MR. BERNHOFT: Thank you, Judge.

2 DEFENDANT OPENING STATEMENT

3 MR. BERNHOFT: Your Honor. Counsel. Ladies and  
4 gentlemen of the jury.

02:35 5 First, as I believe you already know, it's my  
6 privilege to represent Jim Stuart in this federal criminal tax  
7 prosecution. And as Mr. Jacobs has talked about, this is my  
8 opportunity from a defense perspective, from Mr. Stuart's  
9 perspective, to survey what we believe the testimony and  
02:35 10 evidence will show in this case.

11 As to certain significant categories of evidence and  
12 documents, there's no dispute. There is a dispute between the  
13 prosecution and Mr. Stuart over what some of the evidence means.

14 It also bears noting that the prosecution and the  
02:35 15 defense have stipulated that all of Mr. Stuart's letters,  
16 correspondence with the IRS are going to come into evidence.  
17 Now, only a few of these select portions of these letters will  
18 be talked about in the actual trial of the case. I expect that  
19 Mr. Jacobs is going to talk to an IRS witness about certain of  
02:36 20 those letters, and I'm certainly going to be talking to that IRS  
21 witness about other portions of those letters. But I wanted you  
22 folks to know that all of the letters that Mr. Stuart sent to  
23 the IRS and all of the IRS responses are coming into evidence,  
24 and you'll be able to examine them for yourselves.

02:36 25 That said, in late 2004/early 2005, the evidence will

1 show that Jim Stuart began a tax journey. And he began  
2 researching the Internal Revenue Code and the tax law. I  
3 suspect something most of us have never had occasion or wanted  
4 to do.

02:36 5 The evidence will show that he had met some people at  
6 his church who were questioning whether there was an actual law  
7 which made ordinary American citizens liable for the income tax  
8 and required them to file the Form 1040.

9 Now, as the prosecution has already indicated,  
02:37 10 Mr. Stuart had faithfully filed tax returns and paid income tax  
11 all of his working life, as most of us do every year, without  
12 actually knowing what specific law required it. So the evidence  
13 will show that Mr. Stuart set out to find the actual laws that  
14 first made him liable for the individual income tax; second,  
02:37 15 required him to file a Form 1040, and; third, and importantly  
16 for this case as well, subjected the money he made from his  
17 company New Age Chemical to withholding. Those are the three  
18 issues he set out to research and resolve in his own mind.

19 The evidence will show that Mr. Stuart researched  
02:37 20 extensively into the Internal Revenue Code itself, the actual  
21 holy book of tax law. There's a copy on defense counsel table,  
22 the big orange book there. And also the tax regulations. He  
23 performed Internet research. And he also read books on the  
24 subject of tax law.

02:38 25 Now, in September or thereabouts in 2005, and for

1 several months thereafter, the evidence will show that after  
2 about a year or so of doing this research Mr. Stuart directly  
3 engaged the IRS by filing these 1040X amended tax returns for  
4 the three previous years for which he filed 1040s. The 1404X is  
5 an IRS form which allows taxpayers to amend or correct  
6 misinformation, misstatements, erroneous positions taken on 1040  
7 returns.

8 And what Mr. Stuart did as well, is he filed an  
9 attachment to these 1040Xs, which is another IRS form, and you  
10 will see these come into evidence, and you will be able to see  
11 the positions Mr. Stuart took on these forms that he sent right  
12 to the IRS disclosing his position. And that was called a  
13 Form 4852, which is a mechanism to correct a defective W-2.

14 And what you'll see on these returns, these 1040X  
15 returns for '02, '03, '04, and on the attachment forms, the  
16 4852s, is Mr. Stuart's taking a position -- it's an  
17 unconventional position -- he's taking the position that there's  
18 no specific law which subjects the money he makes to withholding  
19 tax. And he files these forms directly with IRS.

20 Now, the IRS indeed responds to Mr. Stuart's letters  
21 with form letters regarding these amended returns, asking for  
22 more information on the amended returns and his W-2 withholding  
23 position. And he cites code sections in his Form 4852. He  
24 cites Code Section 3401 and 3121 for the proposition that the  
25 money he makes is not taxable income and, therefore, not subject



1 to withholding tax. An unconventional position, to be sure.

2 Now, also what you'll see in Mr. Stuart's letters that  
3 will come into evidence, he's asking the IRS where he's wrong  
4 about his legal conclusion that there's no law making him liable  
02:40 5 for the tax or requiring him to file returns, and also his  
6 conclusion that there's -- the money he makes from New Age  
7 Chemical or otherwise is not subject to withholding. And he's  
8 asking the IRS to show him where he's wrong. He sets forth his  
9 legal positions in fairly lengthy letters and legal memorandum,  
02:40 10 citing various code sections and other tax authority.

11 Now, in the IRS response letters you will ultimately  
12 be the judge, and it's an important part of this case, whether  
13 the IRS actually ever answers Mr. Stuart's specific questions  
14 with actual real answers citing to relevant legal authority and  
02:41 15 showing Mr. Stuart what section of the code makes him liable for  
16 that tax and requires him to file that Form 1040.

17 I submit to you that the testimony and evidence will  
18 show that the IRS never provided those sorts of specific  
19 answers. You can review the IRS letters for yourselves, and  
02:41 20 you'll see some of them come into evidence in certain witnesses,  
21 and you'll be able to make your own determination as to what  
22 sort of letters these were.

23 Now, in early 2006, Mr. Stuart's 2005 1040 return  
24 filing date is coming around. And he timely files a 2005 1040  
02:41 25 return. And he takes the identical position, the same

1 consistent position with the IRS that the money he makes from  
2 New Age is not taxable income subject to withholding, therefore  
3 his employer shouldn't be filing a W-2, and there's no law that  
4 requires him to file the return or making him liable for the  
02:42 5 tax. And this is the same consistent position that he took with  
6 these 1040X amended returns. Again, an unconventional position.  
7 The evidence will show that Mr. Stuart took these positions by  
8 directly engaging the IRS and disclosing his positions to  
9 various service centers in Kansas City, Cincinnati, or Ogden,  
02:42 10 et cetera.

11 Now, the IRS responds to his 2005 return in an  
12 interesting way. And the IRS sends several letters to  
13 Mr. Stuart, and each one of these letters asks Mr. Stuart -- or  
14 tells Mr. Stuart -- advises him to be fair; that the IRS needs  
02:42 15 45 or 60 days more to respond to his questions so that they can  
16 perform necessary research. And that sometimes it requires  
17 extensive research, they require more time, the letters are  
18 saying be patient, Mr. Stuart, we're gonna do that research and  
19 get back to you.

02:43 20 Now, during this period in '06 and early '07, much  
21 time passes. And after some additional letter prodding from  
22 Mr. Stuart, the IRS indeed issues a form letter. And these are  
23 all form letters with form numbers on there. And, indeed, in  
24 March of 2007, they issue a letter and they tell Mr. Stuart that  
02:43 25 he's frivolous. "You're frivolous. Your legal theories, your

1 legal conclusions, they have no merit. There's no basis in law.  
2 The federal courts have consistently rejected your positions.  
3 We're not talking to you anymore about the subject."

02:43 4 And the IRS sends three such letters to him telling  
5 him that he's frivolous and that they won't be responding to his  
6 specific legal questions about what law makes him liable for the  
7 tax, what law requires him to file the 1040, and what part of  
8 the Internal Revenue Code subjects the money he makes to  
9 withholding.

02:44 10 What these IRS letters do not do, again, is to answer  
11 Mr. Stuart's specific questions with specific citations to legal  
12 authority showing him the law. And yes, I think it's fair to  
13 say that, in a sense, Mr. Stuart was saying, you know, prove me  
14 wrong, or prove me right, but answer my questions, and do it  
02:44 15 with specificity. And I think that's a fair survey of what the  
16 character of these letters back and forth is.

17 Now, very interestingly, in this letter correspondence  
18 - and this is important, we think - Mr. Stuart tells the IRS  
19 that he stands ready to file any return required to be filed by  
02:44 20 law, and to file any -- and to pay any tax that he is legally  
21 liable for. So in this letter correspondence he's asking the  
22 IRS to answer these questions and, you know, "Show me where the  
23 law is, and I stand ready to file the form and pay the tax."  
24 And this is his engagement with IRS. And this is what he says  
02:45 25 in his letters.

1           Also importantly, Mr. Stuart tells the IRS -- and  
2           you'll see a particular highlighted portion of a letter that I'm  
3           going to query an IRS witness on, where he says, "Look, I want  
4           to be clear, I'm not questioning the legality of the Internal  
02:45 5           Revenue Code, I am questioning the interpretation of the code as  
6           it applies to me. I don't want to be mistaken, I don't want to  
7           be misunderstood."

8           Now, after the IRS's two or three "you are frivolous"  
9           letters in 2007, Mr. Stuart continues to write letters to the  
02:45 10          IRS asking the IRS to resolve his refund claims and to answer  
11          his specific questions.

12          Now, in 2008, some of Mr. Stuart's letters take on a  
13          different character. And the evidence will show that having  
14          gotten no specific answers from IRS about what law makes him  
02:46 15          liable for the tax in the first place, what law requires him to  
16          file the form, et cetera, he starts doing additional research  
17          trying to figure out what the heck is going on. And he engages  
18          the IRS, the system out there that seems not to be specifically  
19          responding to him, and he sets forth additional legal arguments  
02:46 20          regarding complex areas such as federal jurisdiction, adhesion  
21          contracts, Social Security trusts, and the legal meaning of  
22          names in all capital letters, which we all may have a common  
23          experience that we see some of those things in certain legal  
24          letters.

02:46 25          Now, again, all of these letters will be admitted into

1 evidence. You'll be able to see them. You'll be able to draw  
2 your own conclusions about the things that I'm saying, and the  
3 things that Mr. Jacobs has said, about the content of these  
4 letters and what these letters mean in terms of Mr. Stuart's  
02:47 5 position.

6 Now, at this point I'd like to talk to you briefly  
7 about something that's crucially important in your  
8 deliberations, and that's the prosecution's burden of proof  
9 beyond a reasonable doubt on the all important willfulness  
02:47 10 issue. The government has the burden of proving that Mr. Stuart  
11 acted intentionally. And that means that he had to have acted  
12 willfully in violation of a known legal duty.

13 And in income tax cases, most income tax cases, and in  
14 this one, the court will issue a jury instruction called the  
02:47 15 good faith jury instruction. And you all may recall when the  
16 entire jury pool was in here there were some questions and  
17 answers about the importance of jury instructions. And, of  
18 course, you've all taken an oath to discharge your duties as  
19 jurors to obey the jury instructions, the law as the court gives  
02:47 20 it to you.

21 Now, there's a reason that we have jury instructions.  
22 There's a reason that the court instructs on the law. It  
23 provides the jury the legal guidance. Provides you the legal  
24 guidance. You're the judges of the facts. You weigh the  
02:48 25 evidence. You're ultimately going to judge Mr. Stuart's intent,

1 which is the core crucial component of this case.

2 Now, what that good faith instruction says is you're  
3 called upon to determine whether Mr. Stuart sincerely believed  
4 what he says he did. And it sounds simple, and it may be simple  
02:48 5 in this case, but you do have to think about that. And this is  
6 a subjective determination in terms of whether Mr. Stuart  
7 sincerely believed that there was no law that required him to  
8 file a return, that the Internal Revenue Code had no section  
9 that imposed an income tax liability on him, nor subjected the  
02:48 10 money he made to the withholding tax.

11 Now, you might not agree with Mr. Stuart's beliefs.  
12 You're not called upon to tender your opinion on whether you  
13 agree with him or not. You might not approve of the way he  
14 tried to get his questions answered. And whether or not you  
02:49 15 approve of the way he tried to get his questions answered is,  
16 frankly, irrelevant.

17 You might even think that what he did was unwise.  
18 There's the old maxim of not fighting city hall, not tugging on  
19 Superman's cape. You might even think that what he did was  
02:49 20 stupid from a practical perspective. You might even think that  
21 some of his ideas and his theories are kooky, but kooky ain't  
22 criminal.

23 Your duty here, which you've all sworn to discharge,  
24 is to judge the sincerity of Mr. Stuart's beliefs.  
02:49 25 Subjectively. Not according to what you would have thought or

1 what you would have done. And you have a duty to put yourself  
2 in Mr. Stuart's shoes and get inside of his heart and mind. And  
3 frankly, it's a fairly awesome responsibility to judge another  
4 human being regarding issues of intent and what that man or  
02:50 5 woman believes. And determine from his perspective whether he  
6 sincerely believed what he says he believed.

7 Now, your judgment as to the sincerity of Mr. Stuart's  
8 beliefs forms the core of his case. And if you determine that  
9 he sincerely believed what he says he believed regarding his  
02:50 10 obligations under the tax code, our law compels a not guilty  
11 verdict on all counts.

12 Now, going back to a little bit of the historical  
13 chronology, if you will. During the entire period of three or  
14 four years where Mr. Stuart is engaging the IRS with his letter  
02:50 15 writing, asking his questions, the IRS is responding to him,  
16 indeed Mr. Stuart is engaging directly, dealing with a number of  
17 CPAs and accountants. And you will hear -- they will testify at  
18 this trial, a majority of them, and they will testify about  
19 conversations they had with Mr. Stuart. And the evidence will  
02:51 20 show that, as with the IRS, Mr. Stuart was eager to discuss his  
21 research, conclusions, and to ask questions of these CPAs and  
22 tax professionals.

23 The evidence will show that Mr. Stuart was fairly  
24 eager to talk to anybody who would listen to him about his  
02:51 25 position on tax. And I think that Mr. Jacobs' admonition and

1 some of the Court's comments about tapping into your own  
2 personal experience, we all come from a different perspective,  
3 we all think differently, but we all have experience -- whether  
4 we're fathers, mothers, brothers, sons, daughters, aunts,  
02:51 5 nieces, we all I think get a pretty good idea, particularly as  
6 we get a little bit older, about why people do the things they  
7 do.

8 And so, I would ask you to take a look at the  
9 testimony and evidence in this case from that perspective, that  
02:51 10 human perspective, and ask yourself, what does a garden variety  
11 tax cheat do? You know, does a garden variety tax cheat who  
12 wants to cheat the IRS out of money, does he start writing  
13 letters to the secretary of the Treasury, the Commissioner of  
14 IRS, the Ogden, Cincinnati and Kansas City Service Centers? And  
02:52 15 essentially putting a target on his back, and on his front, and  
16 on his forehead for that matter, for special IRS attention which  
17 he ultimately got.

18 And I think that bears, your common experience about  
19 why people do what they do, and then you examine what Mr. Stuart  
02:52 20 did and his engagement with the IRS in determining whether he  
21 really believed what he says he believed.

22 Now, these CPAs and accountants will testify. I think  
23 you might be surprised by some of the testimony. And as with  
24 all the evidence in the case I would invite and implore you to  
02:52 25 pay close attention to the testimony from these CPAs and



1 accountants who will relate their conversations with Mr. Stuart  
2 and what advice they may or may not have given him.

3           You will also hear testimony from Beverly Schlipp.  
4 This is Mr. Stuart's sister. She owns about 30 percent of the  
02:53 5 New Age Chemical Corporation. She's a minority owner. This is  
6 the company that Jim and Beverly's father started many decades  
7 ago. Mr. Stuart joined his father early on. The evidence will  
8 show that together they made New Age Chemical a successful  
9 entrepreneurial company. And they manufactured and sold  
02:53 10 specialty lubricating oils and rust inhibitors to small machine  
11 shops and tool and die companies. Now, Beverly Schlipp came on  
12 later, after her father's death, and she has served as the  
13 company's controller, keeping all the books and records of the  
14 company.

02:53 15           You are going to hear testimony from Allison Reese.  
16 This is Beverly Schlipp's daughter, Mr. Stuart's niece, one of  
17 his nieces. And you're gonna hear how she was concerned that  
18 Mr. Stuart's beliefs and his conduct might negatively impact her  
19 mother, Beverly Schlipp, her employment, or even harm the  
02:53 20 company.

21           You will also hear testimony that Mr. Stuart did not  
22 file 1040 returns after 2005. And he directed the company to  
23 pay him through draw checks, straw accounts and other checks so  
24 that withholding taxes would not be taken out.

02:54 25           One thing that I believe is important as you hear the

1 testimony and evidence and deliberate on it, is that all of  
2 these transactions, all of these checks, whether they were  
3 paychecks that had withholding taxes taken out, or a draw check  
4 to a shareholder in a company -- which, by the way, there's  
02:54 5 nothing per se wrong with taking a draw check -- and other  
6 mechanisms of payment to his trust, the Delafield trust, these  
7 were all recorded in the books and records of New Age Chemical.  
8 And you'll hear some of the CPAs talk about how Beverly Schlipp  
9 was a scrupulous bookkeeper and set forth all of these checks  
02:54 10 and all of these payments in the internal books and records of  
11 New Age Chemical. And you will hear no evidence whatsoever,  
12 because there isn't any, that Mr. Stuart ever tried to inhibit  
13 or preclude or stop or alter Mrs. Schlipp from entering all of  
14 these payments to him in the books and records of the company.

02:55 15 You will also hear some testimony from the CPAs that  
16 in spite of the fact that Mr. Stuart took this unconventional  
17 position, that his money wasn't subject to withholding tax, he  
18 allowed and gave his employees at New Age the choice as to  
19 whether they wanted to continue to have withholding taxes taken  
02:55 20 from their checks. He did not try and force his beliefs and  
21 will on them, and, in fact, you'll hear testimony that indeed  
22 New Age Chemical continues to withhold taxes and pay those taxes  
23 over to any employee at New Age who wants that done.

24 Now, in closing -- and again, I'll have an opportunity  
02:55 25 to speak to you again in closing argument after the prosecution

1 and Mr. Jacobs gives his closing argument after the close of all  
2 the evidence and testimony in this case, and talk further about  
3 what actually comes out here in this trial, the actual testimony  
4 of these witnesses and the actual documents. And it's your  
02:56 5 obligation to determine whether Stuart did this to try and cheat  
6 the IRS out of money, or because he sincerely believed the law  
7 didn't make him liable for the tax and didn't require them to  
8 file the form. This is the core issue in the case.

9 At the close of all evidence and after you've  
02:56 10 completed conscientious and considered deliberations, I have  
11 confidence that you will return the only verdict supported by  
12 the evidence - not guilty on all counts.

13 I thank you for your attention. Thank you.

14 THE COURT: We will take a short break at this time.

02:56 15 (Jury out at 2:56 p.m.)

16 THE COURT: We'll take a short break. Counsel, you  
17 may work with the staff.

18 MR. BERNHOFT: Thank you.

19 (Recess taken at 2:57 p.m., until 3:10 p.m.)

03:10 20 THE COURT: Before the jury comes in, I'm curious  
21 whether or not there is any need for sequestration of witnesses.

22 MR. BERNHOFT: The defense moves to sequester, Your  
23 Honor. I'm sorry, I should have done that.

24 MR. JACOBS: And, Judge, I would like a couple  
03:10 25 exceptions. One would be the case agent.

1 THE COURT: That request is granted. That is  
2 standard.

3 MR. JACOBS: And one would be the summary witness  
4 Revenue Agent Kathleen Bashaw who will be testifying at the end  
03:10 5 summarizing her tax calculations based on the evidence that  
6 comes in at trial.

7 THE COURT: Counsel?

8 MR. BERNHOFT: No objection, Judge.

9 THE COURT: Very well. Those exceptions are noted.  
03:11 10 Please instruct your witnesses appropriately so that they do not  
11 communicate with each other respecting their testimony.

12 All right, are we ready to proceed?

13 MR. JACOBS: Judge, if I've understood it correctly, I  
14 think Mr. Bernhoft -- do I understand this right? -- he's going  
03:11 15 to be questioning the witnesses from --

16 MR. BERNHOFT: A standing position right behind the  
17 Elmo machine.

18 THE COURT: Correct.

19 MR. BERNHOFT: Back to the window.

03:11 20 THE COURT: Yes.

21 MR. BERNHOFT: And Mr. Tollefson will be sitting at  
22 counsel table assisting with documents as necessary?

23 THE COURT: Yes.

24 MR. JACOBS: Okay. The reason I ask that, Judge, in  
03:11 25 lieu of -- in view of that, I should say, is it possible that I

1 can then question from here? You know, we're at this position  
2 where we're all at this corner. And at least at this point we  
3 don't have a cable hooked up here to bring a laptop up to here  
4 to work from here.

03:11 5 THE COURT: All right, fine. If it becomes an issue  
6 it will be noted. I will inquire of the jury whether or not  
7 it's problematic.

8 MR. JACOBS: Okay.

9 THE COURT: All right. Bring in the jury, please.

03:12 10 (Jury in at 3:12 p.m.)

11 THE COURT: You may call your first witness.

12 MR. JACOBS: Judge, for our first witness the United  
13 States calls Kristy Morgan.

14 Ms. Morgan, if you would step up to the witness  
03:13 15 stands, remain standing and be placed under oath.

16 THE REPORTER: Raise your right hand, please.

17 KRISTY MORGAN, GOVERNMENT WITNESS, SWORN

18 THE REPORTER: Please state your name and spell your  
19 name for the record.

03:13 20 THE WITNESS: Kristy Morgan. K R I S T Y.  
21 M O R G A N.

22 DIRECT EXAMINATION

23 BY MR. JACOBS:

24 Q. Good afternoon, Ms. Morgan.

03:13 25 A. Good afternoon.

1 Q. Ms. Morgan, in what city do you live?

2 A. I live in Ogden, Utah.

3 Q. How long have you lived in Ogden?

4 A. My entire life.

03:13 5 Q. And are you employed?

6 A. Yes, I am.

7 Q. How are you employed?

8 A. I'm employed with the Internal Revenue Service.

9 Q. How long have you worked for the Internal Revenue Service?

03:13 10 A. For 27 years.

11 Q. And has that always been out in Ogden, Utah?

12 A. Yes. My employment has always been in Ogden.

13 Q. And what is your current position with the IRS?

14 A. I am the court witness coordinator in criminal

03:14 15 investigations for the Ogden campus.

16 Q. How long have you had that position?

17 A. I was selected as the coordinator approximately a year ago.

18 I have served on the cadre as a witness for 10 years.

19 Q. Would you explain to the jury what your responsibilities are  
03:14 20 as -- in your current position?

21 A. As the coordinator I secure documents and records that are

22 maintained by the IRS for the agents and attorneys as we prep

23 for trial. I certify those documents and then testify regarding

24 the documents as a custodian of record on behalf of the

03:14 25 Commissioner.

1 Q. That's the Commissioner of the IRS?

2 A. Correct.

3 Q. Have you ever testified before?

4 A. Yes, I have.

03:14 5 Q. About how many times?

6 A. Over 60 trials.

7 Q. I'd like to show you a series of documents. First I'm going  
8 to start with what have been marked as Exhibits 1, 2 and 3.

9 A. Thank you.

03:15 10 Q. Ms. Morgan, you do recognize what those three exhibits are?

11 A. Yes, I do.

12 Q. What are they?

13 A. These are Form 1040s for tax years 2002, 2003, and 2004,  
14 filed by James and Marjorie Stuart. All three years for James  
03:16 15 and Marjorie.

16 Q. Okay.

17 Your Honor, I'd move into evidence Exhibits 1, 2  
18 and 3.

19 THE COURT: Is there any objection?

03:16 20 MR. BERNHOFT: None, Your Honor.

21 THE COURT: They're received.

22 (Exhibits 1, 2 and 3 offered and received.)

23 MR. JACOBS: Judge, do I be permitted to publish  
24 exhibits to the jury once they're admitted?

03:16 25 THE COURT: Yes, proceed.

1 BY MR. JACOBS:

2 Q. Again, Ms. Morgan, do you also have a monitor in front of  
3 you?

4 A. Yes.

03:17 5 THE COURT: One second. You have an arrow on the  
6 screen. I'm not sure whether that's from the Elmo or something  
7 else.

8 MR. JACOBS: That's weird. I don't have it on my  
9 laptop.

03:17 10 THE COURT: Hopefully it's not too much of a  
11 distraction. I see it on mine. And I see it on the clerk's  
12 screen as well.

13 MR. JACOBS: I assume that -- I don't know what that  
14 is.

03:17 15 THE COURT: We'll deal with it later.

16 MR. JACOBS: Thanks. I don't know what that is.

17 BY MR. JACOBS:

18 Q. All right. Except for the white arrow, is what's on that  
19 display screen the same document you're looking at?

03:18 20 A. Yes, it is.

21 Q. I'm just going to try to highlight a portion of that to make  
22 it a little easier to view parts of it. And can you tell me,  
23 what filing status was used by Mr. and Mrs. Stuart for this 2002  
24 tax return, Exhibit 1?

03:18 25 A. They were married filing jointly.



1 Q. And is that the same with respect to returns filed for 3  
2 and 4?

3 A. Yes, that's correct.

03:18

4 Q. Let me show you next what's been marked for identification  
5 as Exhibit 4. Do you recognize what that exhibit is?

6 A. Yes, I do.

7 Q. Now, what is that?

8 A. This is the 2005 1040 filing for James A. Stuart.

03:19

9 MR. JACOBS: I move into evidence Exhibit 4, Your  
10 Honor.

11 MR. BERNHOFT: No objection, Judge.

12 THE COURT: Received.

13 (Exhibit 4 offered and received.)

14 BY MR. JACOBS:

03:19

15 Q. And, first of all, with respect to that exhibit, what's the  
16 filing status on that exhibit?

17 A. This is married filing separately.

18 Q. Just bear with me one second. I'm sorry.

03:19

19 Now, do you know, Ms. Morgan, if any individual tax  
20 returns were filed by Mr. Stuart for the years 2006, 2007, 2008,  
21 and 2009 and 2010?

22 A. There was no tax returns filed.

03:20

23 Q. And let me next hand you what have been marked for  
24 identification as Exhibits 5 through 10. I guess they're in  
25 reverse. I have them in reverse order there. But would you

1 review those and then I'll ask you a couple of questions.

2 (Witness peruses documents.)

3 A. Okay. I've reviewed those.

4 BY MR. JACOBS:

03:21 5 Q. Can you describe, what are Exhibits 5 through 10?

6 A. They are Form 1120S's, filed for the New Age Chemical, Inc.  
7 company, for 2001, 2, 3, 2004, 5, and 2006.

8 MR. JACOBS: Judge, I'd move into evidence Exhibits 5,  
9 6, 7, 8, 9, and 10.

03:21 10 MR. BERNHOFT: No objection.

11 THE COURT: Each is received.

12 (Exhibits 5-10 offered and received.)

13 BY MR. JACOBS:

14 Q. Now, going back to the individual returns that were filed  
03:22 15 for Mr. Stuart, can you tell me, did Mr. Stuart, for the years  
16 2002, 3 and 4, report any income?

17 A. Yes, he did.

18 Q. Can you describe what type of income he reported?

19 A. On all three of the returns filed there was wages. There  
03:22 20 was interest that was reported. There was capital gains on one  
21 year. There was also either an income or loss from a  
22 partnership.

23 Q. How about for the tax return filed for the year 2005? I  
24 guess that's Exhibit 4.

03:22 25 A. On Exhibit 4 there was shown some interest and some

1 dividends, I believe. Yes. Dividends.

2 Q. Any wages?

3 A. No wages were reported, no.

4 Q. So is -- on the monitor there in front of you, is that that  
03:23 5 2005 return filed by Mr. Stuart individually?

6 A. Yes, it is.

7 Q. And I think you said by way of income there's -- well,  
8 that's probably not very helpful.

9 No wages. Just taxable interest, dividends. About  
03:23 10 \$631.

11 A. That's correct.

12 Q. Now, turning to the New Age Chemical forms, you said what  
13 form is that?

14 A. It's a Form 1120S.

03:23 15 Q. And what is that?

16 A. An 1120S is an information return filed by the corporation.  
17 It shows the income and any deductions. And then this  
18 information that's reported on the return would flow to the  
19 shareholders' tax returns.

03:24 20 Q. That is, this New Age Chemical, Inc., does it pay taxes  
21 itself?

22 A. No. That flows to the responsibility of the shareholders.

23 Q. Is that -- let me strike that.

24 Now, I notice this form, this Exhibit 5, it says it's  
03:24 25 for the year -- I'm sorry, what year is this for?

1 A. It shows on the filing for a time between October 1st, 2001  
2 to September 30th of 2002.

3 Q. Now, why is that?

4 A. Some of the companies file what is called a fiscal year. It  
03:24 5 depends on when their business starts up and when they finalize  
6 that year.

7 Q. Okay. And what fiscal year would you call this then?

8 A. It's basically reported for the 2002 tax year. Because of  
9 the time ending in September of 2002.

03:24 10 Q. But I notice the form says 2001, why is that?

11 A. The forms for 2002 would not be available through the IRS at  
12 this point.

13 Q. Then for the fiscal year ending in September 2002, did New  
14 Age Chemical report having any income that year?

03:25 15 A. Yes. They show gross receipts, yes.

16 Q. And would someone have to report that income and pay taxes  
17 on it?

18 A. Yes.

19 Q. And who would that have been?

03:25 20 A. That would be the shareholders that's identified on the  
21 K-1s.

22 Q. Okay. And does that reflect somewhere in this tax return?

23 A. That should be attached to the tax return. They would file  
24 showing who is the owners or the shareholders from this  
03:25 25 corporation.

1 Q. Okay. Just bear with me one second.

2 I'd like to turn your attention just to Exhibit 9. Do  
3 you have Exhibit 9 there?

4 A. I do.

03:26 5 Q. And I bring it up on the screen, and can you describe for  
6 the jury what Exhibit 9 is?

7 A. This is the 1120S for New Age Chemical for the filing season  
8 ending 2006-09.

9 Q. I'm sorry, ending when? I'm sorry.

03:26 10 A. 2006-09.

11 Q. I'm sorry, so that's like the September of 2006?

12 A. Right. That's when it was filed.

13 Q. And did New Age Chemical make any profit or income that  
14 year?

03:26 15 A. Yes. They show a business income. \$107,998.

16 Q. That's this entry here on line 21?

17 A. That's correct.

18 Q. I see. And again, did New Age Chemical have to pay taxes on  
19 this income?

03:26 20 A. No. It would flow to the shareholders.

21 Q. And does the return indicate who those shareholders are?

22 A. The K-1s attached should identify who the shareholders are.

23 Q. Okay. And we'll get -- do you find that document?

24 A. Yes. It's towards the end of the exhibit.

03:27 25 Q. Okay.

1 A. And one of the shareholders is Beverly Schlipp.

2 Q. Okay. And I think that must be the form I have here up on  
3 the screen; is that right?

4 A. That is correct. Yes.

03:27 5 Q. Okay. And how much income did she have to report and pay  
6 taxes on?

7 A. On item 1, ordinary business income, her tax return should  
8 show \$32,068.

9 Q. And I think you mentioned the company made a little over  
03:27 10 \$100,000, how come she's only reporting \$32,000?

11 A. Because on the K-1 she's identified as owning a little over  
12 29 percent of the company.

13 Q. Okay. Now, this form, you keep calling it a K-1, can you  
14 explain to the jury what is a K-1?

03:28 15 A. That's an actual schedule that is used to identify  
16 shareholders in partnerships or in corporations. It's filed  
17 with the tax return for records with the IRS.

18 Q. Are there any other K-1s associated with this tax return for  
19 New Age Chemical for the fiscal year ending September 30 of  
03:28 20 2006?

21 A. Yes. There is another K-1 attached.

22 Q. Let's see. Going the right way or not. All right. Here we  
23 go. All right. And who is the other shareholder?

24 A. That is James A. Stuart, owing over 70 percent of the  
03:28 25 company.

1 Q. That's this entry in Box H?

2 A. Correct.

3 Q. Okay. And how much income is he supposed to report?

4 A. On ordinary business income, \$75,930.

03:29 5 Q. Okay. Now, you say this -- what period of time did this tax  
6 return pertain to?

7 A. It's the period ending September 30th of 2006.

8 Q. Now, when an individual files their tax return what period  
9 do they cover?

03:29 10 A. Usually it's from January 1st through December 31st of the  
11 tax year.

12 Q. So when would Mr. Stuart have to report this income?

13 A. This amount should be on his 2006 tax return.

14 Q. And when would that have been due?

03:29 15 A. It would have been due April 15th of 2007.

16 Q. I suppose unless that's a Sunday or something.

17 A. Right. Right.

18 Q. Okay. I'd like to show you next what have been marked for  
19 identification as Exhibit --

03:29 20 Oh, by the way, do you know -- I think you mentioned  
21 you have New Age Chemical tax returns for the years -- fiscal  
22 years ending in 2002 through 2000 -- what's the last year you  
23 have a tax return for for New Age Chemical?

24 A. 2007-09.

03:30 25 Q. So ending September 30th of 2007?

1 A. Correct.

2 Q. Okay. Do you know, did New Age Chemical file any tax  
3 returns for later years, 2008, 2009, 2010?

4 A. No, there was no returns filed.

03:30 5 Q. And did you also look for -- now, this is New Age Chemical,  
6 Inc. or Incorporated; is that right?

7 A. Correct.

8 Q. Did you also look for an entity called New Age Chemical  
9 Limited or Ltd?

03:30 10 A. Yes, I did.

11 Q. And did that entity file any tax returns for the years 2008,  
12 2009, or 2010?

13 A. No. The records show there was no returns filed.

14 Q. Let me show you next what have been marked for  
03:30 15 identification as Exhibits 16 and 17.

16 (Witness peruses document.)

17 BY MR. JACOBS:

18 Q. Do you recognize what those two exhibits are, Ms. Morgan?

19 A. Yes, I do.

03:31 20 Q. What are those?

21 A. This is a spreadsheet that's showing the filing history,  
22 Exhibit Number 16, for James A. Stuart, for years 2002 through  
23 2010.

24 Q. Okay.

03:31 25 A. Exhibit 17 is the filing history for New Age Chemical, a



1 spreadsheet also, for filing years 2002 through 2010.

2 Q. Now, with respect to Exhibit 16, the one for Mr. Stuart,  
3 does that summary accurately summarize information obtained from  
4 the tax returns Mr. Stuart filed for the years reflected on the  
03:32 5 summary or that he didn't file any at all?

6 A. Yes. This is correct. I checked them to the tax returns.

7 MR. JACOBS: Your Honor, I move into evidence  
8 Exhibit 16.

9 THE COURT: Is there any objection?

03:32 10 MR. BERNHOFT: None, Your Honor.

11 THE COURT: Received.

12 (Exhibit 16 offered and received.)

13 BY MR. JACOBS:

14 Q. And Exhibit 17, what's that?

03:32 15 A. 17 is the filing history for New Age Chemical for the tax  
16 returns filed from 2002 through 2010.

17 Q. And again, have you confirmed that that summary accurately  
18 summarized the information on the tax returns?

19 A. Yes, I reviewed the tax returns and this is correct.

03:32 20 Q. Okay. So let's first turn to Exhibit 16, see if I can just  
21 focus in. Got the wrong thing on there, obviously.

22 Let's look at the years 2002 through 2005. And would  
23 you just run down the column and explain to the jury the  
24 information that's summarized in -- I guess it's actually the  
03:33 25 second column of Exhibit 16?

1 A. For the 2002 tax year?

2 Q. Yes, please.

3 A. The first column shows that the return was filed. That the  
4 filing joint status was used on that tax return. There was a  
03:33 5 tax preparer by the last name of Kippenhan. It was signed by  
6 both Mr. Stuart and his wife. The wages reported on that tax  
7 return was \$190,275. There was a income from NAC, which is New  
8 Age Chemical, for \$126,710. No capital gains that year.

9 Finally, the adjusted gross income reported on the tax return  
03:33 10 was \$272,674. Computing the taxable income of \$248,299. And  
11 the self-assessment tax made by Mr. Stuart was \$68,718.

12 Q. So again, like you say, it's self-assessment. This all  
13 comes from the tax returns Mr. Stuart filed.

14 A. Correct.

03:34 15 Q. And then the full document itself extends for the later  
16 years, 2006 through 2010. And I gather there's just no  
17 information for those years?

18 A. That's correct. There was no returns filed.

19 Q. Okay. Now, similarly, if we turn to Exhibit 17, and we'll  
03:34 20 focus on -- this is fiscal year ending, so September of the  
21 years indicated. Would you just run through what's in column  
22 for 2002?

23 MR. BERNHOFT: Your Honor, I must point out that 17  
24 hasn't been moved in.

03:34 25 MR. JACOBS: Oh, my --

1 THE COURT: That's correct.

2 MR. JACOBS: I'm sorry. Your Honor, I move into  
3 evidence Exhibit 17.

4 THE COURT: Is there any objection?

03:35 5 MR. BERNHOFT: None, Your Honor.

6 THE COURT: It's now received.

7 (Exhibit 17 offered and received.)

8 THE COURT: You may proceed.

9 BY MR. JACOBS:

03:35 10 Q. Do you see the 2002 column?

11 A. Yes, I do.

12 Q. Run through with the jury the information reflected on that  
13 column for 2002.

14 A. It shows a Form 1120S was filed by the corporation. The  
03:35 15 preparer was Clifton Gunderson. It's signed by a person with  
16 last name of Schlipp. The gross receipts for the company was  
17 \$1,368,591. Officer compensation paid was \$119,975. The  
18 business income was \$180,224. Shows on the K-1, the partnership  
19 owned by Mr. Stuart, was 70.3 percent. And the income per the  
03:35 20 K-1 was \$126,710.

21 Q. Okay. And I gather you summarized the information for all  
22 of the returns through the one filed in '07.

23 A. Correct.

24 Q. Okay. And again, none filed for the years 2008 through  
03:36 25 2010.

1 A. That's correct.

2 Q. Okay. I would next like to show you what have been marked  
3 for identification as Exhibits 12, 13, and 14. Do you recognize  
4 what each of those exhibits is, Ms. Morgan?

03:36 5 A. Yes. Yes.

6 Q. And what are each of Exhibits 12, 13 and 14?

7 A. These are amended returns filed on a Form 1040X for James  
8 and Marjorie Stuart for the tax years 2002, 2003, and 2004.

9 MR. JACOBS: Your Honor, I'd move into evidence  
03:37 10 Exhibits 12, 13, and 14.

11 MR. BERNHOFT: No objection, Your Honor.

12 THE COURT: They're received.

13 (Exhibits 12, 13, and 14 offered and received.)

14 MR. JACOBS: Bear with me one second. I'll bring that  
03:37 15 up.

16 BY MR. JACOBS:

17 Q. Ms. Morgan, let's just take a look first at Exhibit 12. If  
18 you have that in front of you?

19 A. I do.

03:38 20 Q. Can you describe what this document is?

21 A. The 1040X is a claim usually for a refund or a changing of  
22 your tax information previously filed. So this actual claim is  
23 changing the amount of income, reducing it down and requesting a  
24 refund of taxes previously paid.

03:38 25 Q. For what period of time does this particular return pertain

1 to?

2 A. This is for the 2002 tax year.

3 Q. And can you explain the amendment or the change proposed by  
4 this filing?

03:38 5 A. On the second page of the return the preparer has actually  
6 asked for us to look at a document that's attached, and it's a  
7 Form 4852, which is a substitute for a W-2, or to correct W-2  
8 information. And according to this there was no wages actually  
9 earned. However, there is a reporting of federal income tax  
03:39 10 that is still being reported. And so they're adjusting that tax  
11 return based on that form that they filed.

12 Q. Now, do you have the 2002 tax return up there, Exhibit 1?

13 A. I do.

14 Q. And does it indicate the amount of taxes that were withheld  
03:39 15 for 2002 for Mr. and Mrs. Stuart?

16 A. According to the tax return, the federal income tax withheld  
17 was \$26,431.

18 Q. Okay. And so is that the money that this form, this 1040X  
19 seeks to have refunded?

03:40 20 A. That, plus some additional amounts, yes.

21 Q. Okay. And can you tell what those additional amounts are?

22 A. According to the attachments it does not show what the  
23 additional amount is.

24 Q. What's the total refund sought by this amended tax return  
03:40 25 for 2002?

1 A. The taxpayer is asking for \$68,543 to be refunded.

2 Q. And how about -- and do you know when this return was filed  
3 with the IRS?

4 A. It was signed September 17th, 2005, by the taxpayer.

03:40 5 Q. And if we turn to Exhibit 13, what is Exhibit 13?

6 A. 13 is also a claim, an amended return for the 2003 tax year,  
7 filed by the taxpayer, James and Marjorie Stuart.

8 Q. And what's the amendment or change proposed by this amended  
9 tax return?

03:41 10 A. Also, again, they're reducing their income from 377,213 down  
11 to I believe it's \$1,456.

12 Q. And as a result of that change what does this return seek?

13 A. It's seeking a refund for \$62,745.

14 Q. And is there also supporting documents for this amended  
03:41 15 return?

16 A. Yes, there is.

17 Q. And what are those documents?

18 A. Once again, it's the 4852, showing that the W-2 information  
19 was incorrect. There's also attached a handwritten -- it's a  
03:41 20 1099 Miscellaneous from New Age Chemical.

21 Q. And finally, Exhibit 14, what is Exhibit 14?

22 A. This is a 2004 claim filed by James and Marjorie Stuart,  
23 again reducing their income, requesting a refund.

24 Q. And what's the change that's proposed by this filing?

03:42 25 A. They're reducing their adjusted gross income from \$96,872

1 down to \$619.

2 Q. And as a result of that change what does this amended tax  
3 return propose?

4 A. They're requesting a refund of \$17,165.

03:42 5 Q. Now, what tax year does this return pertain to?

6 A. 2004.

7 Q. And how about Exhibit 13, what tax year was that?

8 A. That was concerning the 2003 tax year. Return year.

9 Q. When were these amended tax returns filed, the 2003 and 2004  
03:43 10 tax returns?

11 A. 2003 was signed September 16th, '06, received at the IRS  
12 September of 2006. The 2004 was signed September 18th, '06, and  
13 received at the Internal Revenue Service September 22nd, '06.

14 Q. Now, do you know if the IRS responded to any of these  
03:43 15 filings, these amended tax returns?

16 A. Yes, they did.

17 Q. And I'd like to hand you what's been marked for  
18 identification as Exhibit 27. Ms. Morgan, do you recognize what  
19 Exhibit 27 is?

03:44 20 A. Yes, I do.

21 Q. What is that?

22 A. This is a letter from the Internal Revenue Service to James  
23 and Marjorie Stuart. It's from the Appeals Team regarding a  
24 claim that they received.

03:44 25 Q. Okay. And what's the date of that letter?

1 A. July 27th, 2006.

2 Q. And do you know what claim it refers to or pertains to?

3 A. The letter stating it's regarding the 2002 claim that was  
4 filed.

03:44 5 Q. That is the amended tax return?

6 A. Yes.

7 Q. I see.

8 Your Honor, I'd move into evidence Exhibit 27.

9 MR. BERNHOFT: No objection, Your Honor.

03:44 10 THE COURT: It's received.

11 (Exhibit 27 offered and received.)

12 BY MR. JACOBS:

13 Q. What's the essence of the letter?

14 A. Basically, it's saying that we received your claim for  
03:45 15 refund, and there's no basis in law to any part of your claim  
16 that; that your wages are clearly taxable, and the Appeals  
17 Office is not going to entertain any arguments of this type.

18 Q. Now, does it tell the taxpayer or tell Mr. and Mrs. Stuart  
19 what to do if they disagree with the IRS?

03:45 20 A. Yes, it tells them in the third paragraph that you can file  
21 suit, either in the District Court or the United States Federal  
22 Claims.

23 Q. Do you know if the IRS responded to any of the other amended  
24 tax returns filed by Mr. Stuart?

03:45 25 A. Yes, they did.



1 Q. And do you know, did they respond to also his 2005 tax  
2 return where he just reported interest and dividends?

3 A. Yes, they did.

4 Q. And in that regard let me hand you what have been marked for  
5 identification as Exhibits 34, 37, and 40.

03:45

6 (Witness peruses documents.)

7 BY MR. JACOBS:

8 Q. Ms. Morgan, you recognize what each of those exhibits is?

9 A. Yes, you do.

03:47

10 Q. Could you describe generically what each of them is?

11 A. This is a letter called the 3176C, letter sent to James A.  
12 Stuart for the 2005 year, to James and Marjorie Stuart for the  
13 2003, and to James and Marjorie Stuart for the 2002 tax years.

14 Q. I gather for the 2002 and 2003, do they pertain to those  
15 amended returns?

03:47

16 A. Yes, they do.

17 Q. But the 2005, does that pertain to the initial return?

18 A. The actual 1040, yes.

19 MR. JACOBS: Your Honor, I'd move into evidence  
20 Exhibits 34, 37, and 40.

03:47

21 MR. BERNHOFT: No objection, Judge.

22 THE COURT: They're received.

23 (Exhibits 34, 37 and 40 offered and received.)

24 BY MR. JACOBS:

03:47

25 Q. And is the substance of the letters essentially the same?

1 A. Yeah. All three of the letters say approximately the same  
2 thing.

3 Q. And are you familiar with this letter?

4 A. Yes, I am.

03:47 5 Q. How are you familiar with it?

6 A. I worked in the Frivolous Filer Department for 10 years as  
7 the penalty coordinator. I was actually on the team that  
8 developed the letter to put the taxpayers on notice of the types  
9 of returns they're filing and what the consequences could be.

03:48 10 Q. So let's look at Exhibit 40. Do you have that one?

11 A. I do.

12 Q. And what filing does Exhibit 40 pertain to?

13 A. This is -- according to this letter it's for the 2005 1040  
14 that was filed by Mr. Stuart.

03:48 15 Q. And when did this letter go out?

16 A. The letter is dated June 8, 2007.

17 Q. Just going to enlarge the -- by the way, how many pages are  
18 in that letter?

19 A. This letter is actually a four-page document.

03:48 20 Q. And what does the letter tell Mr. Stuart about -- this  
21 pertains I think you said to the 2005 tax return?

22 A. That's correct.

23 Q. What does it tell Mr. Stuart?

24 A. It informs him that the tax return he has filed is frivolous  
03:49 25 and can be subject to a penalty. It informs him of the

1 consequences about filing these types of returns. Advises him  
2 that people who violate tax laws may be subject to federal and  
3 criminal prosecution and maybe even imprisonment. And also  
4 tells him to seek competent counsel as far as a tax attorney if  
03:49 5 he has questions regarding the tax laws. It includes a  
6 Publication 105 that also goes into more detail about your  
7 requirements to file a tax return.

8 Q. Now, the first paragraph, just look at that first paragraph.  
9 I notice that it indicates that the IRS isn't going to respond  
03:49 10 to future correspondence concerning these issues.

11 A. That's correct.

12 Q. Why is that?

13 A. Because of the tax dollars it takes to communicate back and  
14 forth with someone that keeps the same attitude as far as filing  
03:49 15 these types of returns. It's very costly. They've been put on  
16 notice and then we go forward with our enforcement actions. We  
17 don't communicate back and forth and discuss tax laws. That's  
18 not part of the IRS's requirement to discuss tax laws, it's to  
19 process tax returns.

03:50 20 Q. Do you know in a given year how many tax returns does the  
21 IRS have to process?

22 A. I did some research and in the 2008 tax year the IRS  
23 received 142.5 million individual income tax returns for that  
24 year alone. Just individual. Not business, not claims.

03:50 25 Q. Now, I gather, you say this went to Mr. Stuart, that's the

1 same address that's on the other tax returns?

2 A. Yes, it is.

3 Q. Okay. And you mentioned -- did anything come with this  
4 letter?

03:50 5 A. Yes. There's a publication, it's called, "Why Do I Have to  
6 Pay Taxes?" Publication 2105.

7 Q. And was that included with the letters that are in  
8 Exhibit 34 and 37 as well?

9 A. Yes. It's a requirement with this letter.

03:51 10 Q. And let me hand you what's been marked for identification as  
11 Exhibit -- I have 18A, 18B, and 18C. Do you recognize what  
12 those three exhibits are?

13 A. Yes, I do.

14 Q. And are they essentially the same thing?

03:51 15 A. They are.

16 Q. And can you describe generically what they are?

17 A. Yes. It's the Publication 2105, "Why Do I Have to Pay  
18 Taxes?" Each one has a different revision year. We'll update  
19 the publications every now and again. It just depends on what  
03:52 20 the tax laws are whether the publications are updated.

21 Q. Would one of these versions have been included with the  
22 letters going out to Mr. Stuart?

23 A. Yes, they would.

24 MR. JACOBS: Your Honor, I move into evidence

03:52 25 Exhibits 18A, B and C.

1 MR. BERNHOFT: No objection, Your Honor.

2 THE COURT: They're received.

3 (Exhibits 18A-C offered and received.)

4 BY MR. JACOBS:

03:52 5 Q. Could you describe the substance of that publication.

6 A. Each one of the publications basically states some of the  
7 common arguments that are frivolous that are used on tax returns  
8 received by the taxpayers.

9 It also gives the truth about what taxes truly are.

03:52 10 It actually goes into some websites, refers the taxpayers to the  
11 websites where they can research and find out for themselves  
12 different positions the IRS have and also gives them court cases  
13 that they can look at.

14 Q. Now, do you know, did the IRS receive correspondence back  
03:53 15 from Mr. Stuart?

16 A. Yes, he responded back.

17 Q. Is it fair to say the IRS received several letters back from  
18 Mr. Stuart?

19 A. That is correct.

03:53 20 THE COURT: Please approach.

21 (At side bar on the record.)

22 THE COURT: I note the witness has testified several  
23 times respecting arguments that the IRS deems frivolous and that  
24 there has been no objection. And I assume that's a tactical  
03:54 25 decision; however, I would certainly request that you speak with

1 the witness before continuing so that she does not offer  
2 opinions respecting such matters at this point in time.

3 MR. JACOBS: I think that's what the letter says.  
4 She's reading from the letter that that's what it says.

03:54 5 THE COURT: That should be clear.

6 MR. JACOBS: It's not her opinion, it's just that the  
7 publication states that.

8 THE COURT: Correct. Thank you.

9 (End of discussion at side bar.)

03:55 10 BY MR. JACOBS:

11 Q. Ms. Morgan, I just want to make one thing --

12 THE COURT: One second, please.

13 MR. JACOBS: I'm sorry.

14 (Brief pause.)

03:56 15 (Discussion off the record.)

16 THE COURT: You may proceed.

17 BY MR. JACOBS:

18 Q. Ms. Morgan, I just want to make sure that it's clear, you're  
19 not giving your personal opinion as to whether the arguments are  
03:57 20 frivolous, the documents refer to them as frivolous arguments,  
21 correct?

22 A. Correct. And counsel approves that with the IRS. We don't  
23 make determinations ourselves.

24 Q. It's just, again, you're not giving your opinion, you're  
03:57 25 reading what the document says.

1 A. Correct.

2 Q. It calls them commonly used frivolous arguments.

3 A. Correct.

4 Q. In the document. Okay.

03:57 5 You mentioned that the letter talked about a penalty.

6 Can you explain that, what type of penalty you're talking about?

7 A. It's a frivolous return penalty that's assessed from the --

8 it's Internal Revenue Code 6702. Basically says if you file

9 what purports to be a tax return intending to impede the

03:57 10 assessment of tax, then you could be subject to the penalty.

11 That's why the letter goes out to inform the taxpayer prior to

12 the assessment, so they totally understand what they're doing.

13 Q. Do you know, were penalties assessed against Mr. Stuart for  
14 filing frivolous documents?

03:57 15 A. Yes, there was.

16 Q. And how much is the penalty?

17 A. It was at that time \$500. It's now been increased to  
18 \$5,000.

19 Q. And do you know for what years that penalty was imposed on  
03:58 20 Mr. Stuart?

21 A. They were assessed on 2002, 2003, and 2004.

22 Q. And do you know if any of those penalties were paid?

23 A. Yes. There was a payment made and paid, the 2002 and the  
24 2003.

03:58 25 Q. And if I can show you what's marked as Exhibit 46, do you

1 recognize what that document is?

2 A. Yes, I do.

3 Q. And generically what is it?

4 A. It's a check to the United States Treasury from James A.  
03:59 5 Stuart.

6 MR. JACOBS: Your Honor, I would move into evidence  
7 Exhibit 46.

8 MR. BERNHOFT: No objection.

9 THE COURT: Received.

03:59 10 (Exhibit 46 offered and received.)

11 BY MR. JACOBS:

12 Q. And how much is the check for?

13 A. For \$1,007.70.

14 Q. And do you know what this check was in payment for?

03:59 15 A. It was applied to the frivolous return penalties.

16 Q. When was that check received?

17 A. The date on the check is August 6, 2007.

18 Q. And do you know, was it processed or received by the IRS  
19 somewhere around that date?

03:59 20 A. Yes.

21 Q. Now, I gather, Ms. Morgan, you've located a number of other  
22 mailings to Mr. Stuart as well as correspondence from Mr. Stuart  
23 in this matter?

24 A. Yes.

04:00 25 Q. And was he sent other notices and other letters besides



1 these -- I think you said the letters are called 3176 letters?

2 A. Yes, he was.

3 Q. What other type of correspondence was sent to him?

04:00 4 A. There was also a letter 3175 that has basically the same  
5 language only it's regarding the correspondence that's sent in.  
6 He also received notices of the penalty charged and bills for  
7 those penalties.

8 Q. And then I gather the IRS received a series of letters from  
9 him.

04:00 10 Let me show you, for example, what's marked for  
11 identification as Exhibit 41.

12 THE COURT: Let me note for the record that the court  
13 has received various exhibits subject to redaction consistent  
14 with the rules that are in effect in this court.

04:01 15 MR. JACOBS: I'm sorry, Judge, we tried very hard to  
16 get all of it but I can tell, as the court notes, obviously they  
17 didn't get it on that particular document.

18 (Witness peruses document.)

19 MR. JACOBS: If I could just have a moment I can --

04:01 20 (Brief pause.)

21 BY MR. JACOBS:

22 Q. Ms. Morgan, do you recognize what Exhibit 41 is?

23 A. Yes, I do.

24 Q. And what is it?

04:02 25 A. This is a letter to Mr. Dennis Parizek from the taxpayer.

1 Signature line shows it's from James A. Stuart. Mr. Parizek at  
2 the time was the compliance chief in the Frivolous Filer  
3 Department.

04:02

4 Q. And can you tell if this letter pertains to correspondence  
5 sent out by the IRS?

6 A. Yes. It's regarding correspondence dated June 8, 2007.

7 Q. And, in fact, is that Exhibit 40 that was previously  
8 admitted?

9 A. Correct.

04:02

10 MR. JACOBS: Your Honor, I'd move into evidence  
11 Exhibit 48. 41. I misspoke.

12 THE COURT: 41?

13 MR. BERNHOFT: Yes, no objection.

14 THE COURT: Received.

04:03

15 (Exhibit 41 offered and received.)

16 BY MR. JACOBS:

17 Q. Now, have you read this letter previously?

18 A. Yes, I have.

19 Q. Could you summarize the substance of the letter?

04:03

20 A. Basically, it's in regards to the letter that was sent out  
21 telling Mr. Stuart that the return is frivolous, subject to the  
22 penalty, and then it comes in with different tax arguments and  
23 reasons as far as why that return was filed.

04:03

24 Q. And when we look at the last page of that letter, the last  
25 paragraph, is it fair to say essentially Mr. Stuart is asking

1 the IRS to prove its position to him?

2 A. That is --

3 MR. BERNHOFT: Objection. Form.

4 THE COURT: Sustained. The previous response is

04:04 5 stricken. It must be disregarded.

6 You may ask another question, please.

7 BY MR. JACOBS:

8 Q. Can you read the last paragraph of Mr. Stuart's letter?

9 A. The last paragraph says:

04:04 10 "If the IRS is able to satisfactorily provide answers  
11 to the questions posed above and can demonstrate where the Trust  
12 does lawfully owe an income tax, said tax will be paid. The  
13 Trustee believes that since it is the IRS that enforces the  
14 Internal Revenue Code, it should then be best able to answer  
04:04 15 these questions, as the natural person acting as the Office of  
16 Trustee has not been able to find any other independent party  
17 that can do so."

18 Q. I'm sorry, what was the date of that letter?

19 A. The date is June 22nd, 2007.

04:04 20 MR. JACOBS: Judge, that's all the questions I have  
21 for this witness.

22 THE COURT: Very well. You may cross.

23 MR. BERNHOFT: Judge, may we approach very briefly?

24 THE COURT: Surely.

04:05 25 (At side bar on the record.)

1 (Discussion off the record.)

2 THE COURT: Members of the jury, we're going to  
3 truncate our day, which means we end at this point. It also  
4 means that my admonition from earlier goes into effect. Do not  
04:06 5 communicate with anyone, directly or indirectly, by e-mail,  
6 Twitter, blog or any other means. Do not do any research.

7 Keep an open mind. And, of course, do not discuss any  
8 aspect of this case in the jury room or outside of the jury room  
9 until we have concluded all proceedings respecting this matter  
04:07 10 and the case has been concluded - except, of course,  
11 deliberations which you'll be instructed on later.

12 You may take with you your notebooks which Mr. Hill  
13 will lock up until tomorrow. We will see you at 8:30.

14 (Jury out at 4:07 p.m.)

04:07 15 THE COURT: You may be seated.

16 Is there anything that needs to be attended to before  
17 we break?

18 MR. BERNHOFT: Not from the defense, Your Honor.

19 THE COURT: Ms. Morgan, please, of course, do not  
04:08 20 discuss your testimony with anyone. The admonition that applies  
21 to the jury applies to you as well.

22 THE WITNESS: Thank you.

23 THE COURT: I'll see you tomorrow at 8:30.

24 MR. JACOBS: I'm sorry, 8:30, Judge?

04:08 25 THE COURT: 8:30. You can get here at 7:30 but I

1 won't be here.

2 (General laughter.)

3 (Proceedings concluded for the day at 4:08 p.m.)

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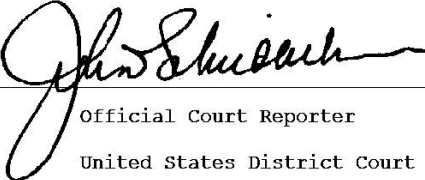
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25

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF WISCONSIN  
3

4 I, JOHN T. SCHINDHELM, RMR, CRR, Official Court  
5 Reporter for the United States District Court, Eastern District  
6 of Wisconsin, do hereby certify that I reported the foregoing  
7 proceedings, and that the same is true and correct in accordance  
8 with my original machine shorthand notes taken at said time and  
9 place.

10 Dated this 5th day of December, 2011,  
11 Milwaukee, Wisconsin.

12   
13 \_\_\_\_\_  
14 Official Court Reporter  
United States District Court

1	I N D E X			
2	OPENING STATEMENT			
3	BY MR. JACOBS.....			2
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6				
7	<u>WITNESS</u>	<u>EXAMINATION</u>	<u>PAGE</u>	
8	KRISTY MORGAN, GOVERNMENT WITNESS			
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10				
11	*****			
12	E X H I B I T S			
13	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>ADMITTED</u>
14	1	Jim/Marjorie Form 1040 for tax year 2002.....	31	31
15	2	Jim/Marjorie Form 1040 for tax year 2003.....	31	31
16	3	Jim/Marjorie Form 1040 for tax year 2004.....	31	31
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18	5	New Age, Inc. Form 1120S filed for 2001 .....	34	34
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21	8	New Age, Inc. Form 1120S filed for 2004 .....	34	34
22	9	New Age, Inc. Form 1120S filed for 2005 .....	34	34
23	10	New Age, Inc. Form 1120S filed for 2006 .....	34	34
24	12	Form 1040X for James/Marjorie Stuart for 2002...	44	44
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1	14	Form 1040X for James/Marjorie Stuart for 2004...	44	44
2	16	Filing history for James A. Stuart 2002-2010....	41	41
3	17	Filing history for New Age Chemical, Inc. ....	43	43
4		2002-2010		
5	18A	Publication 2105.....	53	53
6	18B	Publication 2105.....	53	53
7	18C	Publication 2105.....	53	53
8	27	July 27, 2006 IRS letter to Stuart.....	48	48
9	34	3176C, letter sent to James A. Stuart for 2005 .	49	49
10		year		
11	37	April 23, 2007 letter from IRS to Stuart.....	49	49
12	40	June 8, 2007 letter from IRS to Stuart.....	49	49
13	41	6/22/2007 Stuart to IRS letter.....	58	58
14	46	\$1,007.70 James A. Stuart check payable to .....	56	56
15		IRS, dated 8/6/2007		
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